

## The State of South Carolina



Office of the Attorney General

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The Honorable Johnny Mack Brown  
Sheriff, Greenville County  
4 McGee Street  
Greenville, South Carolina 29601

Dear Sheriff Brown:

In a letter to this Office you raised questions concerning your authority as sheriff in emergency situations. You first questioned whether a sheriff as chief law enforcement officer of a county is authorized to exercise the power of posse comitatus so as to grant municipal police officers law enforcement authority in unincorporated areas of the county. 1/

This Office has recognized in several prior opinions that a county sheriff is the chief law enforcement officer of the county. See: Opinions dated June 16, 1986, September 18, 1985, June 18, 1955. See also: Trammel v. Fidelity and Cas. Co., 45 F.Supp. 366 (D.S.C. 1942); Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986). Pursuant to Section 23-15-70 of the Code

(a)ny sheriff, deputy sheriff ... may call out the bystanders or posse comitatus of the proper county to his assistance whenever he is resisted or has reasonable grounds to suspect and believe that such assistance will be necessary in the service or execution of process in any criminal case and any deputy sheriff may call out such posse comitatus to assist in enforcing the laws and in arresting violators or suspected violators thereof.

In Scott v. Vandiver, 476 F.2d 238 (4th Cir. 1978) the court referenced that by common law, a sheriff is authorized to summon bystanders to assist him in apprehending felons. As to Section

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1/ The term "possee comatatus" is defined as "the power or force of the county." Black's Law Dictionary, 4th Ed., 1968.

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23-15-70 specifically empowering a deputy sheriff to call out a posse comitatus to assist in making an arrest while not making any reference to sheriffs, the court concluded that such statute supplements rather than supersedes the common law so as to avoid any conclusion that a deputy sheriff is conferred powers greater than a sheriff. In a prior opinion of this Office dated February 1, 1963, it was similarly recognized that pursuant to Section 23-15-70, sheriffs are authorized to call upon the assistance of bystanders in cases of emergency. The Missouri Supreme Court in State v. Goodman et al., 449 S.W.2d 656 (1970) determined that those orally deputized by a sheriff to aid him in making an arrest are neither officers nor mere private persons but occupy the legal position of a posse comitatus. The Court further stated that a member of the posse comitatus while cooperating with the sheriff and acting pursuant to his orders is clothed with the protection of the law as is the sheriff.

As to your question regarding whether a sheriff is authorized to exercise the power of posse comitatus to grant municipal police officers law enforcement authority in unincorporated areas of a county, it has been generally stated that

(o)fficers of different municipalities acting with a deputy sheriff in performance of duties owing to the respective political units each represents are not to be regarded as a posse comitatus.

80 C.J.S., Sheriffs and Constables, Section 34, p. 203. The Wisconsin Supreme Court in Village of Schofield v. De Lisle, 235 N.W. 396 (1931) held that the term "posse comitatus" implies the exercise of authority by a sheriff in calling upon private citizens to aid him in preserving the peace or making an arrest.

In a prior opinion of this Office dated October 10, 1978, the question was raised as to whether the jurisdiction of a municipal police officer is extended in circumstances where the officer is called out of his jurisdiction by a deputy sheriff to assist on a call. The opinion concluded.

(b)ecause of the express limitations of Section 17-13-40 ... (which authorizes police officers to make an arrest when in pursuit within three miles of the corporate limits of his municipality) ... the jurisdiction of the municipal police officer could

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not be extended simply by virtue of a call from another officer outside the municipality. Unless some other express authority exists which would allow such a practice ... the municipal officer would be beyond his authority. 2/

Similarly, in an opinion dated August 28, 1961 former Attorney General McLeod concluded that a sheriff was not authorized to deputize a municipal police officer so as to vest him with the authority of a deputy sheriff to make arrests and perform other duties of a deputy. As to the precise question of whether a municipal police officer was authorized to assist a deputy sheriff on a call outside the municipal limits, reference was made to the fact that the authority of a municipal police officer is generally restricted to the limits of his municipality except when in "hot pursuit."

This Office in prior opinions has recognized that several statutes authorize law enforcement activity by municipal police officers outside their regular jurisdiction in certain instances. Pursuant to Section 23-1-210 of the Code, the intra-state transfer of municipal law enforcement officers on a temporary basis is authorized. Such statute specifically provides that:

(a)ny municipal or county law enforcement officer may be transferred on a temporary basis to work in law enforcement in any other municipality or county in this State under the conditions set forth in this section, and when so transferred shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred.

Such provision states that prior to such a transfer, a written agreement must be entered into by the affected jurisdictions. Section 5-7-120 of the Code authorizes law enforcement officers

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2/ Such is consistent with the provisions of Section 5-7-110 of the Code which provides that police officers "... shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated...."

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to respond in cases of emergency to another political subdivision request. Such provision states:

(w)hen law enforcement officers are sent to another municipality pursuant to this section, the jurisdiction, authority, rights, privileges and immunities, including coverage under the workmen's compensation laws, which they have in the sending municipality shall be extended to and include the area in which like benefits and authorities are or could be afforded to the law enforcement officers of the requesting political subdivision.

Such section further provides that such officers who respond to requests for assistance have the same law enforcement authority as possessed by the law enforcement officers in the political subdivision which requests assistance. 3/ In an opinion dated February 15, 1985 this Office determined that in such circumstances such officers would have the law enforcement authority established by Section 17-13-40 referenced above when responding to requests for assistance. This Office also recognized in a June 20, 1984 opinion that Sections 8-12-10 et seq. of the Code "... would permit the interchange of local governmental employees, such as sheriffs' deputies, between the counties." Consistent with such, Section 8-12-10 et seq. would also permit the interchange of city police officers.

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3/ As to what circumstances would constitute an "emergency" as used in Section 5-7-120, an opinion of this Office dated December 5, 1983 referenced the following definitions:

(t)he term 'emergency' is 'an unusual or abnormal condition beyond the control of the [requesting municipality] and a condition beyond [its] reasonable power to remove or overcome. It may arise from causes other than casualty or unavoidable accident or act of God ... Our Supreme Court has used the definition from Websters' New International Dictionary to define 'emergency' as 'an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency ....

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In an opinion dated May 17, 1978, this Office referencing Section 6-1-20, Code of Laws of South Carolina, 1976, and Article VIII, Section 13 of the South Carolina Constitution determined that:

(t)he ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted ... (R)eady these ... sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to the municipality.

Referencing the above, it is clear that there is specific authority for a law enforcement officer to act outside his jurisdiction in certain circumstances. However, it is also clear that implicit in any such authorization is the requirement that there be agreement between the two affected jurisdictions.

The opinion of this Office dated October 10, 1978 referenced above also dealt with the question of the authority of a municipal police officer to answer a call outside his municipal jurisdiction. The opinion concluded that if an officer should answer a call outside his jurisdiction, typically he would have no authority to make an arrest or to take any action in the matter, other than action of a non-legal nature, such as to call in an officer who does have jurisdiction in the matter.

Consistent with the October, 1978 opinion of this Office, we are unable to conclude that a sheriff as chief law enforcement officer of a county is authorized to exercise the power of posse comitatus to grant municipal police officers law enforcement authority in unincorporated areas of a county. Instead, in such instances, reference should be made to the various provisions noted above which authorize activity by law enforcement officers outside their regular jurisdiction pursuant to an agreement between the affected jurisdictions.

In another question you asked whether a sheriff is authorized in periods of emergency to respond in ways such as closing liquor stores or halting the sale of firearms. Please be advised that I am unaware of any authority of a sheriff in such

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regard. Pursuant to Section 61-13-380 of the Code

(i)t shall be unlawful to sell any alcoholic liquors on Sunday, on statewide election days, or during periods proclaimed by the Governor in the interest of law and order or public morals and decorum. Full authority to proclaim such periods is hereby conferred upon the Governor in addition to all other powers in him now reposed.

However my research has not revealed any similar authority for a sheriff in emergency situations.

If there is anything further, please advise.

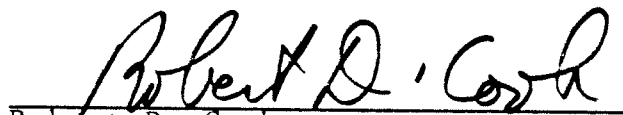
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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